of many points applicable to this case, which from the fact that they are there so fully discussed, I have not deemed it necessary to notice here.

It is claimed that the Legislature had by subsequent legislation, ratified this Act before the commencement of this suit. If this Act at the time it was passed was void, for the reason that it did not contain an expression of the legislative will upon the subject matter of the Act, I do not perceive how an amendment of the Act, unless made upon some point necessarily requiring the expression of the legislative will upon the expediency of the Act itself, can be held to ratify it.

The Legislature in passing the Act with a provision to submit the question to a vote of the people, assumed that the Legislature as well as the people were vested with a power which we hold they do not possess. In amending the Act we have the right to suppose that they still labored under the same impression.

They therefore only intended to amend what they supposed to be a valid law of the land, and not to take the responsibility of re-enacting the law itself. An amendment made under such circumstances cannot have the effect to make a void law valid.

And as to the subsequent Act, the title of which reads, "An Act to submit to the people at the next annual election the question of the repeal of the Act establishing Free Schools throughout the State," it is so palpably unconstitutional even within the reasoning of my brother Johnson, in *Johnson* vs. *Rich*, cited above, that it will scarcely be claimed it could have any ratifying effect upon another unconstitutional law.

The Judgment at the Special Term must, therefore, be affirmed.

In the Supreme Court of New Jersey, February, 1853.

DACOSTA & DAVIS, *vs.* DAVIS & HATCH.

A contract for the sale of personal chattels over the value of $30, made in New Jersey, but to be performed in Pennsylvania, must, in order to be binding, be made according to the formalities prescribed by the statute of New Jersey, for the prevention of frauds and perjuries.

This case arose on Certificate from the Circuit Court of Camden, for an advisary opinion.

Browning for Plaintiffs.

Dudley and Carpenter for Defendants.

The opinion of the Court was delivered by

OGDEN, J.—The point presented is, whether the statute of frauds in New Jersey, prescribes the proof necessary to establish the contract set up by the plaintiffs, which was to be performed in Pennsylvania.

In the fifteenth section of the act for the prevention of frauds and perjuries, (Revised Statutes, page 504,) it is enacted, that "no contract for the sale of any goods, wares and merchandise, for the price of thirty dollars or upwards, shall be allowed to be good, except the buyer shall accept a part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment, or that some note or memorandum in writing of the said bargain, be made and signed by the parties, to be charged by such contract, or their agents, thereunto lawfully authorized."

In the State of Pennsylvania there is no such statute; and the ground taken by the plaintiffs is, that as the subject-matter of the sale was in Philadelphia, and the delivery and payment were to be made there, the place of performance was fixed in Pennsylvania; and that proof, according to the laws of that State, should be held sufficient to establish the contract.

Whatever may be the rule governing contracts made in one State, respecting immoveable property in another State, when the laws of the two require different solemnities to give validity to sales thereof, or contracts made in one State, and consummated and recognized by delivery and enjoyment of the subject-matter of it in another State, having different laws as to tests of validity of sales, it is clear that personal property or merchandise has no *locus sitæ*, but follows the person of the owner; and the generally recognized rule is, that his alienation of it is governed by the law of the domicil, or of the place where the sale is made. Such contracts should have in any other State, the same interpretations, binding force and validity, which they have in the State where made. The *lex loci*

contractus, acts upon the *rights* of the parties, though the remedy may be otherwise controlled. Had the turpentine in question been stored in Camden, and the agreement of the parties have been that it should be delivered there, the laws of New Jersey admittedly would have governed in deciding upon the validity or invalidity of the contract for the sale, even if the suit had been brought in another State. If the contract for the sale was good in New Jersey, it would have been good in Pennsylvania; and it is a consequence, that if void in New Jersey, it must be void in Pennsylvania, and every where else. It would be doing violence to well-established principles in jurisprudence, to hold, that a contract respecting chattels, void for want of proper authenticity in the place where made, should be valid, under any circumstances, within other territorial limits.

Admitting the ground taken by the plaintiffs, that the *lex loci contractus* is, in some measure, affected by the law of the place where the contract is to be performed, the principle of that rule does not apply to the point in the present case. It may relate to the rate of interest recoverable upon a class of such contracts, but not to the essence and vitality of the contracts themselves.

Burge on Sureties, *p.* 100. "Whatever formality or ceremony, either as to time, place or manner of making the contract, or as to its form, as whether by parol or in writing, which the law renders essential to the perfection and validity of the contract, and is required to be observed as a condition on which it recognizes the existence of the contract, is one of the *solemnia* of it." And "the manner in which a contract is constituted, is one of the *solemnia* of the contract, and its validity depends upon the *lex loci contractus*."

Martin's Louisiana Reports, *p.* 34. "Contracts are governed by the law of the country in which they are made, in everything which relates to the mode of construing them, the meaning to be attached to the expressions used, and the nature and validity of the engagement."

The law of the place where a contract is entered into, is to govern as to everything which concerns the proof and authenticity of the contract, and the faith which is due to it; that is to say, in all

things which regard its solemnities and formalities. Cited from a foreign jurist in *Story on Conflict of Laws, section* 240. "The performance is to be according to the law of the country where *it* is to take place."

In a case where a contract was made in one country for the payment of money in another country, where, by a law, a stamp was required to make the contract valid, but not so where the contract was made, it was held that in such case a stamp was not necessary to give validity to the contract; that it being valid where made, it was valid elsewhere; and that the *lex loci contractus*, and not the *lex solutionis*, should control the question. The Court remarked, "that an instrument, as to its form and the formalities attending its execution, must be tested by the laws of the place where it is made; but the laws and usages of the place where the obligation, of which it is evidence, is to be fulfilled, must regulate the performance." The rule is clear, that if parties mean to bind themselves, they will adopt the forms and solemnities which the *lex loci* prescribes for establishing the validity of a contract. *They* are the only *criteria* for testing the intention of parties.

A clearer illustration of the rule is drawn from a particular consideration of the effect of the foregoing provision of the statute of frauds upon contracts, to which it refers. *Story on Conflict of Laws, section* 282, says, "if such contracts made by parol (per verba,) in a country, by whose laws they are required to be in writing, are sought to be enforced in any other country, they will be held void, exactly as they are held void in the place where they are made."

Upon the foregoing well-established rules and principles, it is evident that if the turpentine had been lying in Camden instead of Philadelphia, and was to have been there delivered, no action could have been maintained on the proof relied upon by these plaintiffs, either in the tribunals of New Jersey or of Pennsylvania.

How does the fact of the storage of the article, and the allegation that it was to be delivered and paid for in Philadelphia, bear upon the validity of the contract of the sale? Or affect any of the "solemnia" which manifest its legal existence? That question I have not been able to solve favorably for the plaintiffs.

By the law applicable to the case, the Circuit Court should not have admitted oral testimony to prove the contract declared upon, but under the circumstances, it should have required the production of a writing, made in conformity with the provisions of the statute of New Jersey to prevent frauds and perjuries. Upon this point, then, the Court should be advised that the verdict must be set aside, and the plaintiffs non-suited.

In the Supreme Court of Pennsylvania.

MILLER *vs.* GILLELAND.

1. Where the holder of a bond or note makes an alteration in its date, he avoids the instrument, even though the alteration was in truth the correction of a mistake, and was so intended.—LOWRIE and WOODWARD, J. J. *dissenting.*
2. The original action here was upon a note under seal. The plaintiff alleged that the note was dated as of a wrong year, and altered it for the purpose of making it conform to the truth. On the trial it was objected, that the note was avoided by the alteration, and thereupon the plaintiff proved that the alteration was honestly made in mere correction of a mistake, and under the instruction of the Court, (WATTS, P. J.) that this was a sufficient answer to the objection, the plaintiff had a verdict, and judgment was entered thereon. To this instruction the error is assigned.

The opinion of the Court was delivered by

GIBSON, J.—The conveyance of an estate which lies in livery and not in grant, is not avoided by an alteration even in a material part of it: for the title, being vested by a deed having by statute the force of livery of seisin, can be revested only by a reconveyance. (*Bull, N. P.* 217.) But an alteration of a bond, bill or note, stands on a different principle. Where it is made by the voluntary act of the creditor and increases or injuriously affects the responsibility of the debtor, what ever the motive for it, the security is gone. The rule is founded in policy to protect the debtor from acts prejudicial to him, hard to be guarded against, and done in his absence, and without his agency or consent; but it is unapplicable to an alteration which leaves the legal effect of the instrument as it was before, as was held in *Zouche*